

M E M O R A N D U M

TO: Governing Board Members

FROM: Deena Reppen, Deputy Executive Director, Regulatory and Public Affairs

DATE: March 16, 2010

SUBJECT: **Adopt amendments to Rule 40E-4.091, F.A.C., and the “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District” (Basis of Review) incorporated therein, to delete Section 4.3.9 Mitigation Reduction Through a Melaleuca Eradication Program.**

Staff Recommendation

Staff recommends adoption of the amendments to Rule 40E-4.091, F.A.C. and Section 4.3.9 of the Basis of Review for Environmental Resource Permits to delete the Mitigation Reduction Incentive through a Melaleuca Eradication Program.

Background

On January 1, 1997, the District implemented a program through the Environmental Resource Permitting process that would encourage property owners to maintain their property free of melaleuca (*Melaleuca Quinquenervia*) by providing a regulatory incentive in the form of future reductions in required mitigation for potential future wetland impacts. At the time of the rule implementation, it appeared that the proposed mitigation incentives would likely be utilized primarily by larger land owners with long term development or potential buildout plans. However, since the effective date of the rule, not a single property owner has applied for or used the incentive program. In addition, in February 2004, the State of Florida passed legislation requiring applicants for Environmental Resource Permits to utilize the Statewide Uniform Mitigation Assessment Method (UMAM) for determining mitigation requirements. As a result, the melaleuca incentive program is no longer a valid mitigation option for applicants.

Staff Contact: **Anita Bain, Director, Environmental Resource Permitting Division
(561) 682-6866**

**Susan Martin, Sr. Specialist Attorney, Office of Counsel
(561) 682-6251**

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – _____ ~~11-11-09~~”.

(b) through (k) No Change.

(2) No Change.

Rulemaking Authority 373.044, 373.103(8), 373.113, 373.171, 373.413, 373.441, 668.003, 668.004, 668.50, 704.06 FS.

Law Implemented 373.413, 373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 373.441, 668.003, 668.004, 668.50, 704.06 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, 10-1-06, 11-20-06, 1-23-07, 7-1-07, 7-22-07, 11-11-09, _____.

(The following represents proposed changes to the document entitled “Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – 11-11-09” incorporated by reference in Rule 40E-4.091, F.A.C.)

~~4.3.9 Mitigation Reduction Through a Melaleuca Eradication Program~~

~~(a) —The intent of this section is to encourage landowners to maintain their land free of exotic vegetative species by providing a regulatory incentive in the form of future reductions in required mitigation. A landowner whose property contains melaleuca (*Melaleuca quinquenervia*), may elect to participate in a melaleuca eradication program. Landowners who implement a successful melaleuca eradication program which has been approved by the District may earn a reduction in mitigation requirements up to a maximum of 50% to be used towards mitigating future wetland impacts resulting from regulated activities undertaken on the subject property. The development and implementation of a melaleuca eradication program pursuant to this section shall not require an Environmental~~

~~Resource Permit or a permit fee.~~

(b) — In order to be eligible for the future mitigation reduction, a landowner must submit a plan to District staff for review and approval and successfully implement the melaleuca eradication program. The submitted plan must detail the extent of melaleuca coverage over the entire property, including both wetlands and uplands, for which the melaleuca eradication program is to be implemented. The plan shall differentiate between wetland communities and upland communities, and shall specify melaleuca coverages and acreages for each community type which the landowner proposes to include in the melaleuca eradication program. Each vegetative community type shall be mapped using the Florida Land Use, Cover and Forms Classification System (FLUCCS) to a minimum of Level III.

(c) — The plan must include a map showing all of the landowner's property holdings which are contiguous to the property which is the subject of the melaleuca eradication program. Landowners may submit proposals to subdivide large land holdings based on phase boundaries or operational units.

(d) — The melaleuca eradication plan must specify the following:

1. — the methodology to be used initially to eliminate or eradicate the existing melaleuca population;
2. — the subsequent management and maintenance procedures that will be undertaken on the property to ensure that:
 - a. — the area has no living mature or sapling melaleuca trees;
 - and
 - b. — less than 1% of the total land area included in the melaleuca removal program contains live melaleuca seedlings.

(e) — The melaleuca eradication program must include a monitoring plan to

~~document the success of the melaleuca eradication efforts over time. In order to be approved, the melaleuca eradication plan must provide reasonable assurances that:~~

- ~~1. the plan is designed to achieve a significant overall improvement of ecological conditions;~~
- ~~2. the plan is capable of being successfully implemented based on reasonable scientific judgement given due consideration of such factors as adjacent land uses and proximate seed sources;~~
- ~~3. the initial eradication methodology and subsequent management and maintenance procedures will not adversely impact wetlands, native upland habitat or listed species;~~
- ~~4. the plan will not eliminate melaleuca in some areas of the property while facilitating melaleuca encroachment or proliferation into other areas of the property;~~
- ~~5. the plan will not allow invasion by other exotic vegetation (category I and II species of trees, shrubs and vines as specified in the Florida Exotic Pest Plant Council's List of Florida's Most Invasive Species) in the areas where melaleuca has been removed.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Director, Environmental Resource Permitting Division

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 10, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 30, 2009